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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 779

CENTRAL KENTUCKY NATURAL GAS COMPANY, APPELLANT,

vs.

RAILROAD COMMISSION OF KENTUCKY, MOSES R. GLENN, OSCAR VEST, AND JAMES HATCHER, MEMBERS CONSTITUTING SAID RAILROAD COMMISSION; BAILEY P. WOOTON, ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY; CITY OF LEXINGTON, A MUNICIPAL CORPORATION, AND S. B. FEATHERSTON, INDIVIDUALLY AND AS REPRESENTING ALL OTHER PERSONS SIMILALY SITUATED.

STATEMENT OF JURISDICTION.

Pursuant to Supreme Court Rule 12, paragraph 1, Central Kentucky Natural Gas Company, the above appellant, files this its statement showing the basis on which it contends that the Supreme Court has ap-

pellate jurisdiction to review on appeal the decree appealed from herein:

I.

The statutes believed to sustain appellate jurisdiction are as follows:

(1) Sec. 24 of the United States Judicial Code (28 U. S. C. A., Sec. 41), which provides that

"The District Court shall have original jurisdiction as follows:

"(1) First, of all suits of a civil nature at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States * * *."

(2) Sec. 266 of the United States Judicial Code (28 U. S. C. A., Sec. 380), which provides that whenever an application for a temporary injunction against any officer of a State to restrain the enforcement of an order made by a Commissioner acting under and pursuant to the statutes of such State, the Justice or Judge to whom such application shall be made shall call to his assistance two other Judges, provided that one of such three Judges shall be a Justice of the Supreme Court or a Circuit Judge, and further providing that an appeal may be taken direct to the Supreme Court of the United States from the order of such court granting or refusing in its final decree a permanent injunction in such suit.

II.

This action is of a civil nature in equity which was filed in the United States District Court for the East-

ern District of Kentucky at Lexington by the plaintiff, seeking to enjoin the members of the Railroad Commission of Kentucky and the Attorney General of said State from enforcing an order entered by said Railroad Commission on October 9, 1929, fixing a rate of 45 cents per M. cubic feet for gas furnished by the plaintiff to consumers thereof in the City of Lexington under a franchise contract entered into between the plaintiff and said City of Lexington, a municipal corporation, bearing date February 25, 1927, upon the ground that said rate of 45 cents was confiscatory and violated the rights of plaintiff secured to it under Section 1 of the Fourteenth Amendment of the Constitution of the United States providing that,

> "* * *; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

III.

Said Railroad Commission of Kentucky in fixing said rate proceeded under the powers conferred upon it by Chapter 61 of the Acts of the General Assembly of 1920 of the State of Kentucky (now Secs. 201 *e*-1 to 201 *e*-26, Kentucky Statutes, Carrol's 1932 Edition).

IV.

The plaintiff first made application for said injunction to the Honorable A. M. J. Cochran, Judge of said U. S. District Court for the Eastern District of Kentucky, but said Judge declined to sit therein on the

ground of being disqualified, and thereupon the plaintiff made and presented said application to the Honorable Charles I. Dawson, Judge of the United States District Court for the Western District of Kentucky, who thereupon organized a statutory three-judge court by calling to his assistance the Honorable Charles H. Moorman and Honorable Smith Hickenlooper, Circuit Judges, both of whom are members of the United States Circuit Court of Appeals for the Sixth District.

V.

The decree sought to be reviewed was entered by said court organized as aforesaid, on September 22, 1932.

VI.

The application for the appeal herein was presented to said court on the 19th day of December, 1932.

VII.

By its decree said court found that said Commission rate of 45 cents was invalid, inadequate and confiscatory, but refused to grant a permanent injunction against the enforcement of said rate by reason of plaintiff's refusal to consent to a distribution of the fund impounded under the temporary rates fixed by the franchise contract on the basis of 50 cents per M. cubic feet for gas as a reasonable rate.

VIII.

The question of jurisdiction in this action was considered by said court on the motion filed by the ap-

pellees (defendants below) to dismiss the action for want of jurisdiction. Said motion was overruled, and the opinion of said court on the question of jurisdiction is published in 37 Fed. (2d) 938. The statement of the facts of this cause as set out in said opinion and the authorities therein referred to are believed by appellant to sustain the jurisdiction of said court and of the Supreme Court of the United States.

Dated December 20th, 1932.

(Signed) D. L. HAZELRIGG,
CHESTER J. GERKIN,
HENRY T. DUNCAN,
Attorneys for Appellant.